

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 637 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
VAKHATSINH J JADEJA

Versus

STATE OF GUJARAT

-----  
Appearance:

MR PV HATHI for Petitioner

Mr.A.J.Desai for M/s.M.G.Doshit & Co. for respondents 1,2 & 5

Respondent no.4 served.

-----  
CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 18/10/96

ORAL JUDGEMENT

The petitioner started his career as a Lecturer in a College run by respondent no.4-Education Society, of which respondent no.5, at the relevant time was the Principal. The name of the College is J.B. Thakkar Commerce College, Mirzapur, Kutch-Bhuj. The petitioner came to be appointed on the said post somewhere in the year 1970 and gradually, he came to be appointed as a

Professor in the pay scale of 400-30-640-40-800 with effect from 15th June 1975.

2. In the year 1976 an important event happened in the world of college employees, may be, Lecturers, Professors etc. when the State of Gujarat, respondent no.1 with the approval of the Central Government, implemented recommendations of the pay revision made by the Sen Commission. A Government Resolution came to be issued with regard to it on 23rd November 1976. As it happens in all such cases, pay fixation formula was forming part of said G.R. and this formula is to be found at appendix C to the G.R. The very first Rule 1-A with explanation reads as under:

"In the case of a teacher drawing basic pay upto and including Rs.1800/- in the existing scales (a) an amount representing 5 % of the basic pay, subject to a minimum of Rs.15 and a maximum of Rs.50/- shall be added to the existing emoluments of the teacher.

Explanation:I:- Existing emoluments means Basic Dearness pay plus dearness allowance plus interim relief, if any, sanctioned during 1-3-1970 and 1-1-1973 and not any other allowance."

The period is thereby fixed during which the concerned lecturer might have drawn salary irrespective of any other allowance that might have been given to him. The period, as stated above is from 1-3-1970 to 1-1-1973.

3. Accordingly, the respondent-management filled up the requisite form no.28, Annexure C, and as per the formula set out in the said G.R. with appendix, the salary of the petitioner, at the relevant period, worked out to be Rs.621.25. It may be recalled that by the time this exercise was done somewhere in the year 1980, the petitioner had already started working as a Professor since 1970. As the post of Professor came to be abolished, so far as scales are concerned, there came to be established in its place one common cadre of Lecturer. Starting salary of that cadre was 700-1600. In Annexure C page 28, therefore, corresponding revised scale in column no.3 was shown to be 700-1600 and the pay fixed in the revised scale in column no.4 was Rs.700/-

4. The claim made by the petitioner in his petition, as originally filed, sought to be further strengthened by subsequent amendment, was to the effect that he having been selected to the post of Supervisor, the salary earned by him on that post from the year 1975 should have

been taken into consideration for working out the revised salary, may be in the post of lecturer because the post of Professor had been abolished. He further claims that his salary in the post of Professor that he was drawing at the time when recommendation of Sen Commission came to be implemented should have been protected.

5. The G.R. introducing Sen Pay Commission does envisage exercise of an option which the petitioner like other employees did give and a copy thereof is to be found at page 45 Annexure J. There, he has opted to the revised scale of Rs.700-40-1300-50-1600 with effect from 1-1-1973. On the backside of the option form at page 46, he has put a note which reads as under:

" I have been granted three advance increments by the Management due to my hard work and sincerety to the job. Since these three advance increments, one on 15-6-1973 over and above the normal increment plus two more increments on 15-6-1975 over and above one normal incrmnt have been taken into account in the drawn pay of statement and hence my basic pay as on 15-6-1976 should be fixed at Rs.980 + DA + HRA to give me justice. These three increments must be taken into account into due pay of statement."

Learned Advocate Mr.Hathi drew my attention to that note and advanced an argument that the option was made clearly on the aforesaid basis and therefore, while fixing the salary as on 15-6-1976, the amunt of pay that he was getting to the tune of Rs.900/- plus DA and HRA ought to have been given under the new scale.

4. Once option is exercised in accordance with the revised pay brought into existence by virtue of a Pay Commission Report or by any other Government decision, it is a package deal. The Rules governing revision of pay under the new system will have to be read as a whole and accordingly if the aforesaid Annexure C Rule 1(A) is borne in mind, the claim putforth by the petitioner by way of said note at page 46 in his option form has to be ignored and in my opinion, has been rightly ignored by the authorities. Moreover, the petitioner himself, while exercising the option referred to the scale that he would be placed into with effect form 1-1-1973 and he fully therefore, knew that during the years 1970-73 his pay will be fixed in the revised scale on the basis of what he was earning at that time. Once this position is accepted pursuant to the said Government Resolution with Rules as to pay fixation coupled with the option form,

the claim put forth by the petitioner is not substantiated.

5. Before this petition came to be filed, the petitioner had approached the Gujarat Affiliated Colleges Services Tribunal at Ahmedabad by way of Application No.28 of 1984. The learned Tribunal Judge had also rejected the case of the petitioner in this regard though, no doubt, for different reasons. However, as both the Tribunal and I have come to the same conclusion, suffice it to say that the claim of the petitioner on this score has been rejected and rightly done so.

6. There is an alternative prayer in the petition as to the recovery that came to be effected. As the Government started paying grant from the year 1978 and the pay was fixed with effect from 1-1-1973, for the entire period what the Government found to be excess payment, was ordered to be recovered. However, it is one thing to say that while revising the pay under the new orders salary earned on a given date has to be considered and development subsequent thereto are to be ignored whether by way of increment, additional allowance or payment under any other head. So far as the present petitioner is concerned, the development was to the effect that while he was working as a lecturer he was given advance increments and in the year 1975 he came to be appointed as a Professor in that very college. This development has nothing to do with the position that came about in the year 1976 because of the said G.R. The G.R. brought about a situation where the post of Professor in Colleges came to be abolished. Therefore, the salary that the petitioner was getting on that post is of no avail to him, but at the same time, whatever he has earned on that post under the then existing dispensation can never be a subject matter of recovery merely because, under the new Scheme, of necessity, when time is taken for refixation of the salary coupled with the fact that new system is made retrospectively whatever that might have been earned when the system itself was not in existence cannot be equated with what could have been paid under the new formula and therefore, what is to be found in excess, has to be recovered. It may be remembered that what was paid was not under the new formula. It could not have been so paid because the promotion or additional increments came to be given when the formula itself was not in existence.

7. As a result, when the pay came to be fixed as per the new formula particularly appendix C to Rule I-A

quoted above, and there being a difference as per the said formula thus prescribed under the Rules of the new formula of Sen Commission, whatever difference being there ,has to be paid by way of arrears and that amount of arrears cannot be utilised or adjusted against what the management had paid at that time under the staffing pattern then prevalent. The staffing pattern would necessarily include the different designations and graded scales of pay of posts like Lecturers and that of Professors. The change in the entire staffing pattern is the result of recommendation of Sen Commission.

8. What was earned de hors the Commission formula, cannot be adjusted towards the amount payable under the formula and obviously, therefore, this action of the authorities concerned, is bad.

9. The alternative prayer made by the petitioner is, therefore, liable to be allowed. Accordingly, the petition is allowed to that extent. The amount deducted shall be paid to the petitioner within four months from the date of receipt of the writ. The order of the Tribunal is set aside to that extent. Rule to the above extent is made absolute with no order as to costs.

\*\*\*\*\*